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IN THE

Supreme Court of the United States

OCTOBER TERM, 1945.

No. 801

J. H. CRAIN AND R. E. LEE WILSON, JR., Trustees of LEE WILSON & COMPANY, A Business Trust, *Petitioners*,

v.

UNITED STATES OF AMERICA, *Respondent*.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

GEO. E. H. GOODNER,
Washington, D. C.
Attorney for Petitioners.

SCOTT P. CRAMPTON,
Washington, D. C.,
Of Counsel.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

* * * it is elementary that repeals by implication are not favored. Only a clear repugnancy between the old law and the new results in the former giving way * * *. State of Georgia v. Pennsylvania Railroad Co., 324 U. S. 439, 456-457, 65 S. Ct. 716, 726.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

The petitioners, J. H. Crain and R. E. Lee Wilson, Jr., Trustees of Lee Wilson & Company, a business trust, pray that a writ of certiorari be issued to review the judgment of the United States Circuit Court of Appeals for the Eighth Circuit entered in the above entitled cause on November 7, 1945.

OPINION BELOW.

The District Court of the United States for the Eastern District of Arkansas did not file an opinion in this proceeding. Its findings of fact and conclusions of law are found

at pages 16-18 of the record. The opinion of the Circuit Court of Appeals (R. 41-44) is reported at 151 F. 2d 606.

JURISDICTION.

The judgment of the Circuit Court of Appeals was entered on November 7, 1945 (R. 44). The jurisdiction of this Court is invoked under § 240(a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED.

1. When Congress enacted the last sentence of § 8(g) of the Soil Conservation and Domestic Allotment Act, did it intend to nullify all of the preceding part of the section, if the Secretary of Agriculture or one of his agents failed to honor a proper assignment made thereunder, or did Congress merely intend that the Secretary and his agents should not be personally responsible for mistakes made in the administration of the Act?

2. May the rights of citizens and the jurisdiction of the Courts under the Tucker Act be curtailed by a mere provision exempting the Secretary of Agriculture and his agents from suit in the event that they disregard a legal assignment of a conservation payment and make payment to the assignor instead of the assignee?

STATUTES INVOLVED.

The statutes involved are § 24(20) of the Judicial Code and § 8(g) of the Soil Conservation and Domestic Allotment Act, the pertinent parts of which are printed in the Appendix, infra, pp. 9-10.

STATEMENT OF THE CASE.

Petitioners are trustees of Lee Wilson and Company, a common law business trust. This suit was instituted in the District Court of the United States for the Eastern District of Arkansas. The action was based upon a valid assignment

to petitioners by one R. O. Broughton of the latter's claim to soil conservation benefits for 1938 under the Soil Conservation and Domestic Allotment Act, 16 U. S. C. A. § 590a, et seq., and the program carried out thereunder. This program included ascertainment by the Department of Agriculture of acreage allotments for soil depleting crops, including cotton, and the payment of benefits to farmers for planting within the prescribed allotments. (R. 41.) Congress appropriated $500,000,000.00 to carry out the 1938 Soil Conservation Program which sum was made available until June 30, 1940, for allocation to applications of farmers for payment (R. 1-2, 9, 16).

Early in 1938 Broughton leased a 387 acre farm in Mississippi County, Arkansas, from J. H. Crain. Said Crain is managing trustee of Lee Wilson & Company, and as such is one of the petitioners in this case. The petitioners, as trustees, agreed to and did advance to Broughton cash, supplies, and services during 1938 to enable him to produce a crop on this farm. At the time Broughton leased the land and in consideration of petitioners' agreement to furnish the cash, supplies, and services, Broughton orally agreed to execute in favor of petitioners an assignment of his 1938 soil conservation benefits on a form provided by the Department of Agriculture when that form should become available. The form became available in May or June of 1938, and the assignment to petitioners was executed on December 21 of that year. (R. 16-17, 41-42.)

The District Court found as a fact that this assignment was executed solely for the purpose of securing the payment by Broughton to petitioners of the amounts due petitioners for the money, supplies, and services furnished to Broughton for the production of his crops in the year 1938 on the lands therein referred to (R. 17). This assignment was subsequently filed with the proper office of the Department of Agriculture (R. 10). During 1938 Broughton planted cotton within the acreage allotted to the farm operated by him, and it is not denied that he complied with

the requirements of the Soil Conservation Program (R. 41).

The local representatives of the Department of Agriculture thereafter prepared the proper form for Broughton to execute in order to secure payment of the benefits due him under the Soil Conservation Program. This application for payment *showed on its face* the amount of the assignment to petitioners. The application was approved by the local representatives of the Department of Agriculture on December 5, 1939, about a year after the assignment was made. (R. 3, 10, 16.)

On March 11, 1942, the Agricultural Adjustment Administration paid the amount of the claim to the assignor Broughton at which time it admittedly had knowledge of the assignment made by Broughton to petitioners (R. 10, 16).

Petitioners sued the United States under jurisdiction of the Tucker Act. The District Court, after a trial on the merits of the case, entered its judgment for petitioners for $687.57 (R. 18). On an appeal by the Government to the United States Circuit Court of Appeals for the Eighth Circuit, the judgment of the District Court was reversed with instructions to dismiss the complaint of petitioners (R. 44).

SPECIFICATION OF ERRORS TO BE URGED.

The Circuit Court erred:

1. In holding that § 8(g) of the Soil Conservation and Domestic Allotment Act deprived the District Court of the jurisdiction otherwise vested in it under the Tucker Act.

2. In holding that the jurisdiction of the District Courts may be repealed by implication.

3. In construing § 8(g) of the Soil Conservation and Domestic Allotment Act in *pari materia* with the general statute voiding the assignment of claims against the Government rather than as an exception to the general statute.

4. In failing to affirm the judgment of the District Court.

REASONS FOR GRANTING THE WRIT.

1. The Circuit Court of Appeals in reversing the District Court has decided an important federal question contrary to the applicable decisions of this Court and in doing so has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

The statutory language involved is the last sentence of § 8(g) of the Soil Conservation and Domestic Allotment Act, infra p. 10. It reads as follows:

> This provision [for assignments] shall not authorize any suit against or impose any liability *upon the Secretary* [of Agriculture] *or any disbursing agent* if payment to the farmer is made without regard to the existence of any such assignment. (Italics supplied.)

The opinion below holds that this language—

> • • • must *by implication* preclude a suit by an assignee *against the United States* under the Tucker Act, 28 U. S. C. A. Section 41(20). (Italics supplied; R. 43).

It has heretofore been believed to be well established that general statutes are not deemed to be repealed by implication unless no other reasonable construction can be applied.[1] This rule is particularly applicable in connection with statutes conferring jurisdiction[2] since authority to sue the sovereign—when once given—is to be liberally construed.[3]

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[1] *State of Georgia* v. *Pennsylvania Railroad Co.*, 324 U. S. 439, 456-457, 65 S. Ct. 716, 726; *United States* v. *Borden Co.*, 308 U. S. 188, 198, 60 S. Ct. 182; and *United States* v. *Jackson*, 302 U. S. 628, 631, 58 S. Ct. 390.

[2] Cf. *Federal Intermediate Credit Bank* v. *Mitchell*, 277 U. S. 213, 217, 48 S. Ct. 449; and *Rosecrans* v. *United States*, 165 U. S. 257, 262, 17 S. Ct. 302.

[3] *Great Northern Life Ins. Co.* v. *Read*, 322 U. S. 47, 54 (n. 5), 64 S. Ct. 873, and *Becker Steel Co. of American* v. *Cummings*, 296 U. S. 74, 80, 56 S. Ct. 15.

The reasonable construction required of the above quoted sentence is that that sentence was intended to protect the Secretary of Agriculture and the disbursing agents from suits against them for *personal liability* as a result of their paying the assignor instead of the assignee. Cf. *Ickes* v. *Fox,* 300 U. S. 82, 97, 57 S. Ct. 412; *Thompson* v. *Deal,* 67 App. D. C. 327, 335, 92 F. 2d 478, 486; 31 U. S. C. A. § 74; and H. Rept. No. 1767, 75th Cong., 3rd Sess., p. 60. Since the statutory language can be given a reasonable construction without repealing "by implication" the Tucker Act, the opinion of the Circuit Court of Appeals results in an unwarranted cancellation of part of the Tucker Act. And if § 8(g) can repeal the Tucker Act "by implication," countless other statutes on the books are capable of the same construction.

In view of the steadily increasing activities of the United States affecting the rights of its citizens, it is of paramount importance that a liberal construction of the Tucker Act be continued. The curtailing of the jurisdiction of the federal courts by implication obviously leads to and encourages administration of federal laws in line with the personal views of an administrator and often contrary to the will of Congress. As was said in *Stark* v. *Wickard,* 321 U. S. 288, 309, 64 S. Ct. 559—

> When * * * definite personal rights are created by federal statute, similar in kind to those customarily treated in courts of law, the silence of Congress as to judicial review is, at any rate in the absence of an administrative remedy, not to be construed as a denial of authority to the aggrieved person to seek appropriate relief in the federal courts in the exercise of their general jurisdiction. (Citations omitted.)

Had Congress in drafting § 8(g) intended to withdraw the consent of the United States to suits against it, Congress would have said so. It has done so before. 31 U. S. C. A. § 203.

2. The decision of the Circuit Court of Appeals is in probable conflict with the decision of this Court in *Bonwit Teller & Co.* v. *United States,* 283 U. S. 258, 263, 51 S. Ct. 395.

The opinion below refers to the general statute voiding assignments of claims against the government, 31 U. S. C. A. § 203, and then interprets § 8(g) of the Soil Conservation and Domestic Allotment Act as in *pari materia* with the general statute (R. 43). But § 8(g) is an express exception to the general statute. Under well established rules it should be construed so as to give the relief it was intended to provide. *Bonwit Teller & Co.* v. *United States, supra,* and cases cited. Cf. *Richmond Screw Anchor Co. v. United States,* 275 U. S. 331, 346, 48 S. Ct. 194; and *United States* v. *Bang,* 8 Cir., 117 F. 2d 515.

3. The question is of current public importance. As is well known, a large part of the farming in the South and Southwest is done by tenant farmers. Probably 90 per cent of these tenant farmers need financial assistance to plant, cultivate, and harvest their crops. This assistance is generally secured from the landlords or local banks. Congress recognized this practice and enacted § 8(g) for the express purpose of helping these tenant farmers to secure the necessary credit. 82 Cong. Rec. 844-845.

In view of this legislative purpose it can hardly be believed that Congress intended to encourage landlords and banks to loan money on assignments and yet to let the Secretary of Agriculture ignore these assignments and deprive the lender of his right to bring suit under the Tucker Act. This would amount in such cases practically to an entrapment.

The effect of the Circuit Court's decision, however, is to discourage the landlords from extending credit. Of what good is the tenant's assignment if the Secretary of Agriculture may at any time decide to ignore it and leave the security holder with a mere "scrap of paper"? Congress obviously intended that the Secretary and the disbursing agents should not be personally liable if they made a mis-

take and paid the assignor instead of the assignee, *but it surely did not intend to leave the assignee without a remedy.*

The statutory language here involved regarding assignments is *still in effect* and the regulations have not and still do not intimate that the assignments will be worthless at the whim of the Secretary of Agriculture. 16 U. S. C. A. § 590 h(g); 7 C. F. R. § 700.15 (d); 7 C. F. R. Cum. Supp. § 701.411(d); 7 C. F. R. 1944 Supp. § 701.508(e); 1945 Agricultural Conservation Program § 701.607(g), 10 F. R. 509, 512; and 1946 Agricultural Conservation Program § 701.-707(g), 10 F. R. 12795, 12798.

CONCLUSION.

Petitioners respectfully submit that the District Court correctly held that it had jurisdiction of this proceeding; that the judgment of the Circuit Court of Appeals should be reversed; and that to this end the petition for a writ of certiorari should be granted.

GEO. E. H. GOODNER,
Munsey Building,
Washington 4, D. C.
Attorney for Petitioners.

SCOTT P. CRAMPTON,
Munsey Building,
Washington 4, D. C.
Of Counsel.

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